



DEPARTMENT OF FISH AND GAME
OFFICE OF THE GENERAL COUNSEL

1416 Ninth Street
Sacramento, CA 95814

<http://www.dfg.ca.gov>

(916) 654-3821



July 14, 2006

VIA HAND DELIVERY

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812-0100
Attention: Elizabeth Jennings, Senior Staff Counsel

Re: Petition of the California Department of Fish and Game for
Review by the State Water Resources Control Board of an
Action by the California Regional Water Quality Control Board,
Lahontan Board

Dear Ms. Jennings:

The California Department of Fish and Game (CDFG) submits this petition to the State Water Resources Control Board (SWRCB) for review of an action taken by the California Regional Water Quality Control Board, Lahontan Board (Lahontan Board) on June 15, 2006, pursuant to the provisions of Title 23, California Code of Regulations, section 2050 et seq.

Petitioner CDFG in this matter is represented by:

Nancee Murray
Senior Staff Counsel
Office of the General Counsel
1416 9th Street, 12th Floor
Sacramento, CA 95818
(916) 654-3818
nmurray@dfg.ca.gov

and

Michael Haynie
Deputy Regional Manager
Eastern Sierra-Inland Deserts Region
407 West Line Street
Bishop, CA 93514
(760) 872-1133
mhaynie@dfg.ca.gov

On June 15, 2006, the Lahontan Board adopted Order No. R6V-2006-(0027) NPDES No. CA0102776, WDID No. 6B260801001 regarding the Hot Creek Fish Hatchery (Order); attached is a copy of the Order plus Item 13 Late Revision, a late revision to the Order.

CDFG appreciates the time and effort that the Lahontan Board staff put into developing the Order and the opportunity granted to CDFG to provide input for changes. Staff from the Lahontan Board and Tetra Tech were responsive and respectful of CDFG staff suggestions and took the time and made the effort to meet in person with CDFG staff to answer questions and resolve many NPDES permit issues in advance of the Lahontan Board taking action. CDFG and Lahontan Board staff were able to resolve many differences regarding this Order and the other actions taken by the Lahontan Board on June 15, 2006, regarding four other hatcheries owned and operated by CDFG. CDFG and Lahontan Board staff, however, were not able to resolve all differences and CDFG believes that the Order contains certain provisions that are not warranted or appropriate for CDFG to be required to do. Therefore, in this petition, CDFG requests review by the SWRCB of Attachment E, Section IX, A. of the Order and requests that section be modified as specifically described below.

At the June 15, 2006 meeting, the Lahontan Board took the action that the CDFG is now asking for review. CDFG raised concerns regarding the appropriateness of this portion of the Order. Specifically, Michael Haynie, Deputy Regional Manager of the CDFG Eastern Sierra-Inland Deserts Region, in which the Hot Creek Hatchery is located, read statements by Jim Harrington of CDFG supporting our request that a bioassessment be required every five years rather than annually at this time. In addition, he read a portion of a report "Hot Creek Hatchery Stressor Identification: Candidate Causes", which states "Multi-year across-site comparisons of the 11 BMI metrics included in the 2001-2004 annual NPDES monitoring reports suggest decreased biotic integrity below the hatchery, but are inconclusive due to contradictory signals from several metrics." Copies of the statements read by Mr. Haynie are attached for your convenience.

CDFG has been conducting bioassessments at Hot Creek since 1993. The techniques developed and the experience gained from these studies has helped CDFG develop the Aquatic Bioassessment Laboratory (ABL). Currently the ABL conducts the majority of the bioassessment work for most of the Regional Boards (Boards) and the SWRCB. The ABL has also advised the Boards on how bioassessment can be used in NPDES permits and even directed the design of surface water ambient monitoring. All of the advice given by the ABL on the use of bioassessment in water quality regulation comes from guidelines developed by the United States Environmental Protection Agency (USEPA). ABL personnel have participated in several of the USEPA national workgroups on the science and policy of bioassessment in water quality regulation.

The advice that the ABL staff has given to Regional Board NPDES permit writers when they have suspected a possibility of non-compliance or when there are discharges into sensitive aquatic systems has been to: 1) require annual bioassessments for approximately 5 years to evaluate whether biological degradation exists as a result of the discharge; 2) have the discharger determine the cause of the degradation using the Stressor Identification (SI) process, if degradation is substantiated; 3) have the discharger initiate a program to reduce the cause of degradation; and 4) request the discharger to conduct a follow up bioassessment every 5 years to evaluate whether there is biotic recovery of the system.

The bioassessment activity at the CDFG Hot Creek Hatchery has followed this paradigm exactly. Bioassessments have been conducted since 1993, an SI team has been assembled, three reports covering phases of the SI investigation have been completed and the final report will be presented to the Board in January 2007. Repeating the bioassessment prior to completion of the SI Analysis and correction of the problem will not provide additional useful information.

Lastly, CDFG estimates that compliance with this provision of the Order will cost CDFG approximately \$15,000 per year. As stated above, CDFG does not expect annual bioassessment to generate additional useful information. \$75,000 over the five year term of this permit is a lot of money to spend for data that would not advance our understanding concerning the status of biotic integrity below the hatchery.

At this time, CDFG requests that a 5-year interval for recovery monitoring be substituted for the annual bioassessment requirement in the Order. With the completion of the SI analysis, CDFG will correct those problems identified by the study and then, after giving some time for the corrections to take effect, conduct follow-up bioassessments. Specifically, CDFG requests that Attachment E, Section IX, A of the Order be modified as follows: "Biomonitoring shall be conducted in year four (4) of the permits, during a summer reference period between June 15 and September 15. Upon completion of the SI study and initiation of any required remedial action, the Discharger shall update the existing biomonitoring work plan to identify response of the biotic community to corrective action. Biomonitoring shall be done once every five years thereafter unless new scientific developments support more frequent monitoring".

This petition is being served via hand delivery to the SWRCB. A copy is also being sent to the Lahontan Regional Board via certified mail this same day, as specified below.

Elizabeth Jennings

SWRCB

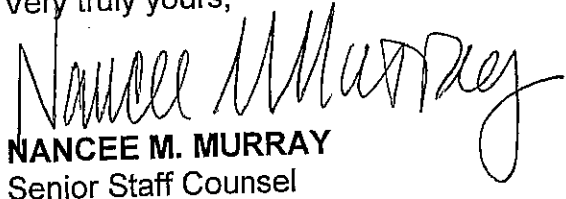
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Again, the CDFG appreciates the time and effort the Lahontan Board staff put into developing the Order and the general openness staff had to CDFG concerns regarding previous drafts of orders potentially affecting its hatcheries in this region. We look forward to continuing to work with the Lahontan Board staff as CDFG begins to implement this and other hatchery permits recently issued by the Lahontan Board.

If you have any questions, please do not hesitate to contact Michael Haynie, Deputy Regional Manager, Eastern Sierra-Inland Deserts Region or Nancee Murray, Senior Staff Counsel, at the phone numbers listed above.

Very truly yours,


NANCEE M. MURRAY
Senior Staff Counsel

cc: (w/o copy of Order)

Harold Singer
Executive Officer
Lahontan Regional Board
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

Cindi Mitton
Supervising Engineer
Lahontan Regional Board
14440 Civic Drive, Suite 200
Victorville, CA 92392

California Department of Fish and Game

Curt Taucher, Regional Manager
Michael Haynie
Steve Parmenter
Eastern Sierra-Inland Deserts Region

Chuck Knutson
Lands and Facilities Branch